

2 DECEMBER 1947

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of
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I N D E X

Of

EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
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EXHIBITS

(cont'd)

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2819-C	3523-C		Letter from War Minister ITAGAKI to Foreign Minister Prince KONOYE dated 7 October 1938 re Emperor's appointment of Lieutenant-General OSHIMA's appointment as Ambassador		34340
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1 Tuesday, 2 December 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE SIR WILLIAM F.
14 WEBB, Member from the Commonwealth of Australia, not
15 sitting from 0930 to 1600; HONORABLE JUSTICE JU-AO
16 MEI, Member from the Republic of China, not sitting
17 from 1330 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20 - - -

21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 ACTING PRESIDENT: All the accused are present
4 except MATSUI, who is represented by counsel. We have
5 a certificate from the prison surgeon of Sugamo cer-
6 tifying that he is ill and unable to attend the trial
7 today. The certificate will be recorded and filed.

8 With the Tribunal's permission the accused
9 SHIRATORI will be absent from the courtroom for the
10 whole of the morning session conferring with his
11 counsel.

12 Captain Kraft.

13 LANGUAGE ARBITER (Captain Kraft): If the
14 Tribunal please, we submit the following language
15 correction:

16 Reference exhibit No. 1175, page 1, first
17 line above paragraph numbered 1, and record page
18 10,363, line 4: Delete "Draft adopted at the Liaison
19 Conference," and substitute "Draft proposed for
20 decision by the Liaison Conference."
21

22 ACTING PRESIDENT: Mr. Tavenner.

23 - - -
24
25

1 H I R O S H I O S H I M A, an accused, resumed
2 the stand and testified through Japanese inter-
3 preters as follows:

4 CROSS-EXAMINATION

5 BY MR. TAVENNER (Continued):

6 Q General OSHIMA, when I was questioning you
7 yesterday regarding your opposition to MATSUOKA's
8 policies toward the United States in May and June
9 1941, I failed to ask you a question I intended to
10 ask you.

11 Did you not on or about July 12, 1941
12 state to Weiszaecker that you had recently advised
13 MATSUOKA again simply to break off negotiations with
14 Washington?

15 A I have no recollection of that.

16 Q Well, did you not in fact so advise
17 MATSUOKA?

18 A My conviction is that I did not say any
19 such thing. My attitude was made clear in a tele-
20 gram which I sent.

21 Q I will now return to matters involving
22 Indo-China.

23 I was asking you questions yesterday about
24 the request from Tokyo for German pressure to be
25 brought upon Vichy France in order to enforce certain

1 demands against French Indo-China. I desire now to go
2 back and ask you whether or not you received a wire
3 from MATSUOKA on 17 February 1941, requesting that
4 you take appropriate measures to bring German pressure
5 to bear upon France to accept Japanese mediation
6 plans in the Indo-China-Thailand dispute.

7 A Are you sure there is no mistake in the
8 date, 17 February 1941?

9 Q No, I am reasonably certain.

10 A At that time I was not yet in Germany.

11 Q Did there come to your attention a telegram
12 sent from MATSUOKA -- strike the question, please.

13 I hand you prosecution document 1157-A,
14 which purports to be a copy of a telegram from
15 MATSUOKA to Ambassador OSHIMA of date February 17,
16 1941, bearing number 123, Foreign Office, marked
17 "secret."

18
19 Now, whether you had actually arrived in
20 Berlin or whether you were in transit to Berlin at
21 that time or not, did you receive that telegram?

22 Just a moment, please. Since handing you
23 the document purporting to be a copy, I have obtained
24 the original. Will you examine the original?

25 A This telegram arrived in Berlin before my
arrival in Berlin. I believe that the Charge

1 d'Affaires took care of it. I, myself, think I must
2 have seen it after assuming my post, but I have no
3 clear recollection of having done so. However, since
4 this telegram bears neither the seal of the Foreign
5 Office nor the seal of the recipient, I cannot say
6 for a certainty that this is a telegram sent from the
7 Foreign Office.

8 Q You were en route from Japan to Berlin at
9 the time this telegram arrived in Berlin; is that
10 not true?

11 A Yes.

12 MR. TAVENNER: This telegram is offered in
13 evidence.

14 MR. CUNNINGHAM: It is objected to for the
15 reason that it is not properly identified, it has not
16 been shown that the telegram came to the attention of
17 the accused or the witness, and it is not binding
18 upon him.

19 I want to further object to the introduction
20 of documents on the part of the prosecution at this
21 stage of the proceeding without first showing that the
22 documents were not in the possession of the prosecu-
23 tion at the time they presented their case.

24 ACTING PRESIDENT: Your last objection has
25 been ruled on many times by this Tribunal, and it

1 ruled that they are allowed to introduce them in
2 cross-examination. So it will not be necessary to
3 argue that point any more.

4 MR. CUNNINGHAM: Yes, your Honor, but the
5 complexion and leadership of this Tribunal has
6 changed since that ruling was made upon that matter,
7 and it probably should be open for reconsideration.
8 I merely want to state that it is highly unfair, it
9 is prejudicial to the accused, it is taking unfair
10 advantage by the prosecution, it is making the
11 defendant answer to charges which were not presented
12 in the prosecution's case.

13 ACTING PRESIDENT: Did you not hear me say
14 we did not want any more argument on that?

15 MR. CUNNINGHAM: I presume it is within my
16 right to ask for a reconsideration of the matter.

17 ACTING PRESIDENT: The previous ruling of
18 the Tribunal will stand.

19 MR. CUNNINGHAM: Now, about the first ob-
20 jection: it is not properly identified by the witness,
21 is not shown to have come to the knowledge of the
22 witness, and is therefore not binding upon this wit-
23 ness.
24

25 ACTING PRESIDENT: What do you say to that,
Mr. Tavenner?

1 MR. TAVENNER: If the Tribunal please, the
2 witness testified that he was en route at the time this
3 was directed to him, that his attache, military attache,
4 handled it, that in all probability he saw it.

5 ACTING PRESIDENT: He said the charge d'affaires
6 and not the military attache.

7 MR. TAVENNER: Yes, sir, he said charge
8 d'affaires.

9 Therefore, it was a matter which binds him,
10 was handled by his agent, and which he has shown from
11 his own testimony he was sufficiently acquainted with
12 to have in general terms identified this document.

13 MR. CUNNINGHAM: Your Honor, may I correct a
14 statement which I consider is not a correct statement
15 of the fact, and that is that the charge d'affaires is
16 not an agent of the ambassador; that a charge d'affaires
17 is the ambassador ad interim during the time of the
18 absence of the ambassador, and whatever happens during
19 the time of the term of office of the charge d'affaires
20 is his responsibility.

21 ACTING PRESIDENT: I have a question from a
22 Member of the Tribunal which may have some bearing on
23 the matter.

24 When did you in fact return to Berlin?

25 THE WITNESS: My recollection is that I

1 MR. TAVENNER: If the Tribunal please, the
2 witness testified that he was en route at the time this
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17 is the ambassador ad interim during the time of the
18 absence of the ambassador, and whatever happens during
19 the time of the term of office of the charge d'affaires
20 is his responsibility.

21 ACTING PRESIDENT: I have a question from a
22 Member of the Tribunal which may have some bearing on
23 the matter.

24 When did you in fact return to Berlin?

25 THE WITNESS: My recollection is that I

assumed my post on the 19th of February 1941.

1 ACTING PRESIDENT: What date does the telegram
2 show that it was received in Berlin?

3 MR. TAVENNER: The date is blank.

4 ACTING PRESIDENT: The date of dispatch was
5 the 17th of February?

6 MR. TAVENNER: Yes, sir, at 10 p.m.

7 ACTING PRESIDENT: By a majority, the objection
8 is overruled. The document will be admitted.

9 CLERK OF THE COURT: Prosecution document
10 1157-A will receive exhibit No. 3521.

11 (Whereupon, the document above
12 referred to was marked prosecution exhibit
13 No. 3521 and received in evidence.)

14 MR. TAVENNER: I regret to advise the Tribunal
15 that there are not sufficient copies in English avail-
16 able for all the Members of the Tribunal. I have pro-
17 duced all the copies that I can find.

18 ACTING PRESIDENT: Is there any copy for the
19 defense?

20 MR. TAVENNER: I have just suggested that
21 counsel look at my copy with me as I read it.

22 MR. CUNNINGHAM: I don't like to be difficult,
23 but I think that this manner of procedure after the
24 technical compliance that the prosecution required is
25

certainly difficult for us.

1 ACTING PRESIDENT: I will give you my copy.

2 MR. TAVENNER: The prosecution has never been
3 required to distribute documents being used on cross-
4 examination. Had I known in sufficient time that I
5 would use this document, I of course would have done so.

6 MR. CUNNINGHAM: That brings up another issue,
7 your Honor, that the prosecution in all reasonable fair-
8 ness should be required to serve these documents on the
9 defense at least twenty-four hours in advance so that
10 we have the same notice as they have as to what the
11 evidence in this case is going to be, and it is cer-
12 tainly a ridiculous thing to impose upon the defense one
13 obligation and not the same obligation upon the prosecu-
14 tion.
15

16 ACTING PRESIDENT: You have been told time
17 and again that that is not the rule of the Court. It
18 would destroy all surprise on cross-examination.

19 MR. CUNNINGHAM: I submit.--

20 ACTING PRESIDENT: It is no use taking up the
21 time of the Court with arguing these things over and
22 over again.
23

24 MR. CUNNINGHAM: I submit, your Honor, that
25 merely because the Court makes a mistake is no reason
why it should not correct the mistake.

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21 time of the Court with arguing these things over and
22 over again.

23 MR. CUNNINGHAM: I submit, your Honor, that
24 merely because the Court makes a mistake is no reason
25 why it should not correct the mistake.

1 ACTING PRESIDENT: That will do from you,
2 Mr. Cunningham.

3 MR. TAVENNER: I will read the exhibit:

4 "Concerning the current mediation in the
5 Thailand-French Indo-China border dispute, please pro-
6 pose to the government to which you are assigned to use
7 its good offices to have Vichy government accept our
8 mediation plan after having explained the following:

9 "(1) The success or failure of our mediation
10 will not only gravely affect the political situation
11 of East Asia, but the positions of all Axis Powers.
12 Hence, this is not merely a local problem between Thai-
13 land and French Indo-China. That is, in case of rupture
14 of the mediation, fighting between Thailand and French
15 Indo-China will inevitably start again and this, in the
16 long run, may lead to our armed intervention. However,
17 in such case, it will become impossible to obtain
18 rubber, rice and other products of that area, which are
19 of necessity to both Japan and Germany. Needless to
20 say, this not only will be a great obstacle in the
21 execution of the national policies of both Japan and
22 Germany, but will enable England and America to take
23 advantage of this opportunity to throw the South Seas
24 into confusion through intensification of their activ-
25 ities toward the Netherland East Indies and French

1 Indo-China and also through the carrying out of their
2 favorite propaganda. It is clearer than seeing fire
3 that this will upset Japan's southern policy and
4 eventually cause a serious setback in the operations of
5 Germany and Italy.

6 "Moreover, in the above instance, the situation
7 will be such that it will be difficult to guarantee that
8 England will not steal a march on us and take such action
9 as to occupy the strategic points of Thailand. On
10 the other hand, in case the mediation is a success, we
11 will be able to peacefully establish our influence in
12 Thailand and French Indo-China and also firmly estab-
13 lish the grounds upon which to request for the various
14 conveniences which we desire, besides leaving no room
15 for the activities of England and America. Therefore,
16 the question as to whether the position of Japan in East
17 Asia will be strengthened or not depends directly on
18 the success of this mediation and this, at the same
19 time, affects the question of the extension of the Axis
20 Powers' influence against England and America.
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2 favorite propaganda. It is clearer than seeing fire
3 that this will upset Japan's southern policy and
4 eventually cause a serious setback in the operations of
5 Germany and Italy.

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8 England will not steal a march on us and take such action
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18 the success of this mediation and this, at the same
19 time, affects the question of the extension of the Axis
20 Powers' influence against England and America.
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"(2) However, there is too great a gap in the assertions of both France and Thailand and there appears to be no sign of their compromising readily. On the other hand, since the international situation has become such that further delay in the settlement of the matter is not permissible, we have taken the assertions of both into consideration and decided this mediation plan. However, the gist of it is to return to Thailand the greater part of the territory lost in 1904 and 1907. The former was taken from Thailand by France as compensation for the abolition of extraterritoriality, but if the illogical state wherein extraterritoriality, itself, was established by force is taken into consideration, it was all the more illogical to make her cede her territory as compensation and this should be corrected. The latter was taken over from Thailand in the form of an exchange for several small areas, but looking at it racially or historically, there is no basis for it. It is merely a case where France stole it with the pressure of a powerful state.

"Moreover, in our mediation plan, we have decided to return only a small portion of the latter to Thailand in the form of a sale and to reserve for French Indo-China the historic sites of Cambodia in

1 recognition of French Indo-China's cultural achieve-
2 ments towards Angkor Wat.

3 "(3) Reasons for deciding on the mediation
4 plan.

5 "(a) Besides that mentioned previously,
6 the question of restoration of lost territory is,
7 for France, a problem of a colony or, accurately
8 speaking, an area of a protectorate located far away
9 and having no natural connection when considered
10 from all racial, historical, geographical and cul-
11 tural aspects, but it is, for Thailand, a problem
12 of her domain and racial alienation. Hence, the
13 degree of gravity differs completely.

14 "(b) Although France points out that
15 Thailand has suddenly enlarged upon her demand (the
16 two areas of Laos on the right bank of the Mekong
17 River) made prior to the acceptance of Japan's
18 mediation and asserts that this is unreasonable, that
19 there may be such a change with the development of
20 military action is inevitable. Hence, the question
21 lies in whether the present Thailand-French Indo-
22 China border is correct when the truth is considered.

23 "(c) In regard to the war situation, although
24 Thailand was defeated in sea battles, it has been an
25 overwhelming victory for Thailand in regard to land

1 battles, which hold the key to overall victory, and
2 if we had not proposed to mediate, the Thailand army
3 would have overrun all Cambodia. Besides the above
4 fact, it is not only our officers, who have inspected
5 the locality who unanimously admits the fact that the
6 morale of the Thailand Army is high while the French
7 Indo-China Army has absolutely no fighting spirit,
8 but even among the French officials who have visited
9 the front, there are some expressing the same opinion.

10 "(d) In view of this above-mentioned fact
11 and from the fact that the French Indo-China Army
12 although she may reopen hostilities is unable to
13 oppose the Thailand Army with all its force while
14 the Japanese Army is stationed north of Hanoi as at
15 present, the defeat of the French is nearly certain.
16 Consequently, it would be wise for France to forget
17 all sentimental arguments and sour grapes at this
18 time and seek for a rapid solution of the problem
19 with the magnanimity worthy of a great nation rather
20 than to discuss peace after being defeated.

21
22 "(e) In regard to the territory lost in
23 1904, although it seems as if France has a true in-
24 tention toward restitution on the whole, she is
25 manifesting considerable disapprobation in regard to
the territory lost (T.N. by Thailand) in 1907. As

1 for Thailand, however, there is a view that the
2 former could have been acquired without depending on
3 our mediation and that if Japan had not intervened,
4 they would have been able to take back more terri-
5 tory in the Cambodia area. The British also are
6 supporting this view to dampen Japan's mediation
7 and since this will lead to the alienation of the
8 collaboration between Japan and Thailand, the possi-
9 bility of Thailand regarding our mediation as
10 troublesome from that standpoint of her international
11 (T.N. This has been changed to 'internal' but the
12 original Japanese character is not crossed out)
13 situation and resorting to arms again is great if
14 the restoration of lost territories is restricted to
15 the former. Hence, we are confronted with the
16 absolute necessity of making the French make some
17 concession in regard to the latter and of preventing
18 Thailand from ceding from our camp and joining the
19 Anglo-American camp.
20

21 "(4) According to the explanation of
22 Thailand, when Thailand sought for Germany's help
23 in regard to this question of restoration of lost
24 territories, Foreign Minister Ribbentrop had replied
25 to the Thailand Minister in Germany and to the
Thailand Foreign Minister through the German Minister

1 in Thailand that since problems of French Indo-
2 China have been all left in the hands of Japan, Japan
3 should be consulted, and Thailand is thinking of act-
4 ing according to Japan's view in regard to this
5 matter.

6 "However, there has been no manifestation
7 of such intention as mentioned above from Germany
8 at any time. Not only that, but France has hinted
9 that as a result of the German-French Armistice
10 agreement, they have no right to dispose of freely
11 problems such as this matter pertaining to the dis-
12 position of her colonies until the peace conference.
13 Hence, it is deemed that the difficulty for the
14 completion of the mediation lies with France.

15 "However, (1) since the success of the
16 mediation will greatly affect the execution of the
17 national policies of the Axis powers, it is necessary
18 to bring this immediately to a success by all means
19 and to establish our influence and stamp out the
20 activities of England and America.

21 "(2) If we do not satisfy Thailand to a
22 certain extent, there is the danger of Thailand
23 swinging away from Japan. Moreover, for this pur-
24 pose, it is necessary to add pressure on France, but
25 to make France accept our mediation plan, it is

1 deemed that there is no alternative but to rely
2 upon the speedy and effective good offices of the
3 German Government toward the Vichy Government.
4 Hence, it is desired that appropriate measures be
5 devised immediately.

6 "Furthermore, the chief of the Bureau of
7 South Seas Affairs has shown our mediation plan to
8 the German councillor here on the 17th and has re-
9 quested for the good offices of the German Govern-
10 ment after explaining the detailed situation."
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1 ACTING PRESIDENT: Are you through?

2 MR. TAVENNER: Yes, sir.

3 ACTING PRESIDENT: I trust you will see that
4 the Members of the Tribunal get copies of that exhibit
5 when it is processed.

6 MR. TAVENNER: Yes, sir. All the rules of
7 the Tribunal with regard to the distribution will be
8 complied with as soon as the work can be physically
9 done.

10 ACTING PRESIDENT: I have two or three queries
11 here from Members of the Tribunal.

12 In effect, is it not possible to avoid this
13 situation of introducing these documents without copies?

14 MR. TAVENNER: It can only be avoided by
15 coming to a decision about the use of the document
16 far enough in advance to permit the processing department
17 to get the work done.

18 ACTING PRESIDENT: This is the second time
19 in two days.

20 I have a question from a Member of the Tribunal.
21 BY THE ACTING PRESIDENT:

22 Q Did I understand you correctly that you
23 assumed your duties in Berlin on the 19th of February?

24 A I did not begin my duties on that date. My
25 duties cannot commence until after I had presented --

1 after I present my credentials, and therefore I did
2 not begin my duties until the 28th of February.

3 Q What date did you actually arrive in Berlin?

4 A I arrived on the 19th.

5 BY MR. TAVENNER (Continued)

6 Q And you held conferences with Ribbentrop at
7 least as early as the 23rd of February, before you
8 had presented your credentials, didn't you?

9 A That was in an entirely different capacity.
10 I could not meet Ribbentrop in an official capacity
11 until after I had presented my credentials, but since
12 we were old friends he asked me to come and see him
13 and this visit was entirely contrary to diplomatic
14 usage.

15 Q But nevertheless it occurred?

16 A Yes.

17 Q Now, did the German representatives in
18 accordance with this telegram bring pressure to bear
19 on Vichy France?

20 A I don't recall at all.

21 Q Did you later communicate with Tokyo in regard
22 to this matter?

23 A It is not in my recollection.

24 Q Did you approve of and favor Japanese establish-
25 ment of naval and air bases in South French Indo-China

in 1941?

1 A My opinion was never asked on that matter,
2 and actually since I had no knowledge regarding how
3 things stood in the Orient at the time, I never even
4 thought of that.

5 Q Well, now, let me refresh your recollection
6 about that. Did you not, as early as 12 July 1941,
7 advise Weiszaecker that the occupation of certain
8 positions in South Indo-China as bases for aircraft
9 and warships was an urgent Japanese need?

10 A I must have conveyed to him instructions which
11 arrived from Japan.

12 Q Then you did know of the contemplated action
13 of establishing naval and air bases in South Indo-China
14 as early as July, 1941?

15 A I learned of Japan's plans in Indo-China --
16 French Indo-China -- only through instructions.

17 Q Now, will you answer my question?

18 A Of my own knowledge, I knew nothing.

19 Q Will you still answer my question? You did
20 learn, then, as early as July the 12th 1941 that Japan
21 contemplated the establishment of air bases and naval
22 bases in South Indo-China, didn't you?

23 A No, I didn't. I said that I knew that Japan --
24 that there were such thoughts in Japan for the first
25

1 time through the instructions which I received.

2 Therefore, if it is true that I did see Weiszaecker
3 on the 12th of July 1941 and talked to him on that
4 matter, it must have been based on the instructions
5 which I received. If I had received no instructions
6 by that date, the 12th of July 1941, then the report
7 of that conversation must be false.

8 Q Well, when do you claim that you first received
9 such instructions from your Government?

10 A I don't recall the exact date, but it is
11 around the time of which you spoke yesterday.

12 Q Well, what time was that?

13 A I don't exactly -- I don't recall the exact
14 date.

15 Q Well, the approximate date.

16 A It must have been some time in July. This
17 matter was not taken up as a subject of discussion at
18 our embassy in Berlin. We just made one communication
19 to the German Government on it, and since it was
20 something that happened quite some time ago, I have
21 forgotten the date.

22 THE MONITOR: Japanese court reporter.

23 (Whereupon, the Japanese court reporter
24 read.)
25

THE INTERPRETER: Correction: "This matter

1 was not handled by the Berlin Embassy for an extended
2 period of time. We received only one instruction --
3 only once did we receive instructions from the
4 Japanese Government on this matter, and therefore
5 since it is something that happened quite some time
6 ago, I have forgotten the exact date."

7 Q Now, did you know in December, 1941 of the
8 penetration of Japanese troops into French Indo-China
9 and did you not approve that action?

10 A My recollection is that I was never informed
11 of that, and as to your second point, my opinion was
12 not consulted on that matter either.

13 Q Well, you did in fact approve of it, didn't
14 you?

15 A I don't think I ever did.

16 Q I hand you prosecution document No. 3270, which
17 is a bound volume of the daily issues of the Tokyo Nichi
18 Nichi, and I ask you to look at the issue of the 27th
19 day of September 1941.

20 Will you please state whether or not there
21 appears in that issue a newspaper article, datelined
22 Berlin, September 25, 1941, quoting a speech which you
23 made in commemorating the first anniversary of the
24 conclusion of the Tripartite Pact?
25

A There is.

1 Q I believe the article also carries your
2 picture, doesn't it?

3 A Yes, there is.

4 Q You made a speech on that occasion, didn't
5 you?

6 A I did not make a speech. I think I talked
7 to a reporter who came to interview me, but I cannot
8 take any responsibility for the contents of that
9 article. And in regard to French Indo-China, also,
10 from what I have been able to glance through here, all
11 it says is the Japanese occupation -- the Japanese
12 advance into French Indo-China... I can't take any
13 responsibility for the contents of the article at all.

14 MR. TAVENNER: I desire to offer for
15 identification only the newspaper volume in the hands
16 of the witness, and from it I desire to introduce in
17 evidence document 3270-A, an excerpt therefrom, which
18 is the result of the newspaper interview mentioned.

19 MR. CUNNINGHAM: The document is objected to
20 for the reasons that it is not properly identified,
21 not properly authenticated, not proven to be genuine,
22 not in the language of the accused or of the witness,
23 not the best evidence in that it was not offered through
24 the means of the best authority available to introduce
25 the contents of the document and that would be the

reporter who took -- made the interview.

1 For the further reason that it is not the
2 best manner in which to introduce evidence of this
3 kind; that newspaper articles and propaganda issued
4 by newspapers other than by the individuals have been
5 discarded by this Tribunal by the wholesale.

6 Certainly the offering of this document violates
7 all of the rules which have been laid down by this
8 Tribunal for documents of probative value, for documents
9 with proper authenticity and for documents which have
10 a binding effect upon the individuals charged.

11 ACTING PRESIDENT: Mr. Tavenner.

12 MR. TAVENNER: The witness, if the Tribunal
13 please, has admitted having an interview with a press-
14 man, as a result of which this articles was printed.
15 I think that sufficiently identifies it. If there are
16 parts of it that the witness claims he has a desire to
17 explain that is another matter. But here is a news
18 interview which he admits he had.

19 ACTING PRESIDENT: The first document is
20 admitted for identification only.

21 CLERK OF THE COURT: Tokyo Nichi Nichi for
22 September, 1941, will receive exhibit No. 3522 for
23 identification only.
24

25 (Whereupon, the document above

referred to was marked prosecution exhibit
No. 3522 for identification.)

ACTING PRESIDENT: By a majority, the
objection is sustained as to the second document.

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BY MR. TAVENNER (Continued):

1 Q General OSHIMA, were you not of the opinion
2 that the Japanese Government, in establishing the so-
3 called new order in East Asia under the Tripartite Pact,
4 planned to use armed force for its accomplishment?

5 A I did not think so.

6 Q Let me see if I can refresh your recollection.

7 Did you not have a conference with Erdsmandorf
8 on or shortly prior to 18 October 1941, in which you
9 stated that in your opinion the Japanese Government, in
10 concluding the Tripartite Pact, must have been certain
11 that the Great East Asiatic area could be achieved only
12 by advance with the sword to the south?

13 A I have no recollection of having stated that.

14 Q Well, do you not recall, and is it not true,
15 that you further stated in this conference that action
16 had been prepared and the question was only when it should
17 be released?

18 A I have no recollection of having made such a
19 statement.

20 Q Do you not recall, and is it not true, that
21 you further stated that the attack may possibly be
22 simultaneous with German operations against Great Britain?

23 A I have no recollection of having made such a
24 statement.
25

1 Q Do you not recall, and is it not true, that
2 you also stated that it would be advantageous to estab-
3 lish a land connection between Germany and Japan by
4 Japan's advance into East Siberia, and that you had pro-
5 posed this repeatedly to your government?

6 A I have no such recollection, and I should like
7 to state, furthermore, that, as I told you yesterday, I
8 had no official conversations with Erdsmandorf at all.
9 My belief is that he merely pieced together what I told
10 him at social functions and the like with other infor-
11 mation which he had received from other sources, and
12 gave it out in that form.

13 Q Well, now, did you not state to Erdsmandorf
14 on another occasion, on or shortly prior to 17 November
15 1941, your personal view that an advance by Japan toward
16 the south was unavoidable, especially because of the
17 pressing need for petroleum?

18 A I have no recollection of having stated that.

19 MR. CUNNINGHAM: I might add my objection now,
20 that I would like to object to any further questions along
21 this line for the reason that they are immaterial. What
22 he said and what diplomatic conversations or chatter
23 took place between the Ambassador and some minor official
24 of Germany, is immaterial. In my submission, anything
25 relative to the diplomatic conversations between any of

1 the Germans is immaterial here; that fundamentally these
2 accused are charged with agreeing among themselves, not
3 with outside parties, and no other charge is contemplated
4 by the Charter.

5 ACTING PRESIDENT: The objection is overruled.
6 BY MR. TAVENNER:

7 Q You have already answered the question, I be-
8 lieve?

9 A I have.

10 Q Now, in this conference with Erdsmandorf, did
11 you not also explain that by advance to the south you
12 meant the seizure of the island of Borneo, above all,
13 was necessary?

14 A I never made such an explanation, and further-
15 more, the interesting thing about that exhibit is that
16 there are names mentioned in it -- geographical names
17 mentioned in it which I do not know.

18 Q You do not know Borneo?

19 A No, not Borneo, but other points on the map.

20 Q Well, now, I had not asked you about any other
21 points on the map, but let us talk about the map a
22 moment. Did not you and Erdsmandorf examine the map
23 to determine how far it was from Borneo to the nearest
24 Japanese troops in South Indo-China, and did you not
25 determine that the distance was 1,000 kilometers?

A No, I didn't.

1 Q Did you not also discuss the nature of the
2 fortifications at Singapore, and did you not make the
3 suggestion that an attack on Singapore would be most
4 effective?

5 A No, I have no such recollection.

6 Q Did you not also tell Erdsmandorf that the
7 three Japanese infantry divisions on the island of
8 Hainan, you assumed, were being trained for landing
9 operations and combat in tropical regions?

10 A I have no recollection of having had such a
11 conversation.

12 MR. TAVENNER: I offer in evidence excerpts from
13 prosecution documents 2156 and 2157 which were put to
14 the witness during cross-examination. I do not intend
15 to read them. The document will be processed and cir-
16 culated as soon as the work can be completed.

17 THE WITNESS: May I not be shown the Japanese
18 copy?

19 ACTING PRESIDENT: Just a minute. I did not
20 catch the name of what these documents are supposed
21 to be.

22 MR. TAVENNER: I put to the witness during the
23 course of cross-examination certain excerpts from his own
24 interrogations. Now I am merely offering the proof of
25 those excerpts, which is exactly the same thing that

1 was done in connection with the cross-examination of
2 General KAWABE. Does that fully explain it?

3 MR. CUNNINGHAM: Certainly I object, for the
4 reason that it serves no useful purpose. It clutters
5 the record and is mere repetition of what has already
6 transpired. Certainly it has no probative value
7 and it is merely compounding the record.

8 ACTING PRESIDENT: If it is already in the
9 record, what is the use of making this extra?

10 MR. TAVENNER: If the Tribunal please, it
11 is true that I read, and I am certain I read accurately,
12 from these interrogations during the course of
13 cross-examination of the witness, but I think it is
14 proper, and I should be expected to prove that the
15 things I read were actually interrogations of this
16 accused and were an accurate record of his interrogations.
17 In other words, I have confronted the witness
18 with what we claim he said on interrogation. I am now
19 proving that he said those things just as I have
20 stated.

21
22 ACTING PRESIDENT: Does the document you
23 have presented contain any more than the questions
24 and answers you propounded to the witness?

25 MR. TAVENNER: No, sir. The excerpts are confined to those which he denied making or expressed

1 uncertainty in making.

2 MR. CUNNINGHAM: In my submission, if there
3 is no irregularity there is no necessity for the filing
4 of the document, and if there is a contest as to what
5 he said on different occasions, that seems to be our
6 objection, not the prosecution's.

7 This is not the best way to do this. If they
8 want to prove the authenticity and the genuineness
9 of these statements that we made, they should bring
10 the person who conducted the interview and they should
11 bring the interpreter to show what he actually said and
12 what was actually recorded, and then he can correct it
13 facing them.

14 ACTING PRESIDENT: We will recess for fifteen
15 minutes.

16 (Whereupon, at 1050, a recess
17 was taken until 1122, after which the
18 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 ACTING PRESIDENT: The objection is sustained
4 at this time. The prosecution may tender these docu-
5 ments at the time of their rebuttal and the Tribunal
6 will consider their admissibility at that time.

7 MR. CUNNINGHAM: Your Honor, that raises
8 another question which it is suggested be kept open
9 until full discussion before this full Tribunal and
10 that is the question of the right of the prosecution
11 to a rebuttal. Mr. Furness is ready to argue that
12 question fully before the Tribunal at a time when it
13 can be agreed upon but he is not here this morning.

14 ACTING PRESIDENT: That question will be
15 dealt with when it arises when they make their offer
16 in rebuttal.

17 MR. CUNNINGHAM: Your Honor, is it not a
18 little more reasonable to determine beforehand in
19 order that all of the preparation necessary for
20 rebuttal will be avoided if we adopt the rule that
21 there is no right of rebuttal?
22

23 ACTING PRESIDENT: We will consider it at
24 that time.

25 Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the

1 Tribunal please, we submit the following language
2 corrections: Reference exhibit No. 2619, Paper
3 No. 3, first paragraph, and record page 22,548,
4 line 25, page 22,549, lines 1-4. Delete the entire
5 paragraph and substitute: "In the event of diplomatic
6 inquiries from third parties, after the conclusion
7 of the pact, now under negotiation, between Germany,
8 Italy and Japan, the Japanese Government will make a
9 verbal explanation in the following sense:"

10 Exhibit No. 774-A, page 4, line 7, delete
11 "in" from the phrase "in the expulsion."

12 ACTING PRESIDENT: Mr. Tavenner.

13 BY MR. TAVENNER (Continued):

14 Q General OSHIMA, did you have a conference
15 with Gaus on or shortly before 11 October 1941 with
16 regard to the prolongation of the Anti-Comintern Pact?

17 A I don't recall the date and I don't recall
18 whether my conversation was with Ribbentrop or with
19 Gaus, but I do know that I did have such a conversation.

20 Q Did you advise the person with whom you
21 conferred that you had wired to Tokyo repeatedly about
22 the matter?

23 A I have no such recollection.

24 Q Did not you and the person with whom you
25 conferred discuss the advisability of playing up the

1 occasion of prolonging the Anti-Comintern Pact in a
2 big manner?

3 A I have no recollection of having had such
4 a discussion.

5 Q Did you sign the prolongation agreement in
6 behalf of Japan?

7 A In accordance with instructions from the
8 Japanese Government I signed the agreement.

9 Q That was November 25, 1941, I believe?

10 A Yes.

11 Q Was a ceremonial meeting held in commemora-
12 tion of its signing?

13 A I believe a reception was held at Hitler's.

14 Q Did you speak on that occasion?

15 A No, I didn't.

16 Q Did you not have some public word to state
17 at the reception or at the time of the signing?

18 A No. The form that was adopted when this
19 prolongation was decided on was that each country par-
20 ticipating was to make a declaration of its intent,
21 and when Japan's turn came up I made this declara-
22 tion of Japan's position, and this constituted the
23 prolongation of the agreement. The signing of the
24 pact by writing which was mentioned before is errone-
25 ous, and the form which I have just mentioned, this

1 declaration of intent was equivalent to a written
2 signing of the pact.

3 Q Did any other Japanese speak on that occasion
4 in regard to the matter in addition to yourself?

5 A No one did.

6 Q Did you speak in German?

7 A Yes.

8 Q I hand you IPS document 4014, entitled
9 "Japanese speaks German," and I ask you if you made
10 that statement or speech?

11 (Whereupon, a document was handed
12 to the witness.)

13 A This is erroneous. The statement I made at
14 that occasion was a very simple one, merely saying that
15 the Japanese Government agreed to the prolongation of
16 the pact.

17 Q Well, did you make the statement that I
18 handed you?

19 A It is not in my recollection at all. This
20 which you have handed me is not a declaration but a
21 speech, a kind of speech that one would make at a
22 dinner table. It is completely different.

23 Q Well, my question to you was whether or not
24 you made that speech?

25 A No, I didn't.

1 Q It is a speech made in commemoration of the
2 signing of the Anti-Comintern Prolongation Agreement,
3 is it not?

4 A As I have told you, I made no speech at the
5 commemoration reception. I merely made a declaration
6 at the ceremony which took the place of signing the
7 pact.

8 Q All right, let's forget for the moment the
9 reception to which we referred. Is this not a speech
10 made in commemoration of the signing of the Anti-
11 Comintern Prolongation Agreement, as shown from its
12 context?

13 A What I am telling you is that I made my
14 declaration not at any commemoration but at the actual
15 ceremony which took the place of the actual signing.

16 Q Will you please answer my question and forget
17 about previous questions that were asked you. Now,
18 will you answer my last question, please?

19 A I understood your question to mean whether or
20 not this was a speech made at a meeting in commemoration
21 of the signing of the prolongation of the pact. But
22 I have no recollection of having made such a speech.

23 Q I will put the question this way: Does not
24 this document show on its face that it was a speech
25 made at some time, or an article written on some

1 occasion in commemoration of the signing of the Anti-
2 Comintern Prolongation Agreement?

3 A Yes. As I have told you repeatedly, this
4 document was not one which was used at the time of
5 the ceremony equivalent to the signing of the pact,
6 but it was a speech made at some occasion commemorating
7 this pact. But I, myself, have no personal recollection
8 of the speech.

9 Q Does not this document show on its face,
10 particularly in the last paragraph, that it was a
11 speech, or article, made in behalf of Japan by someone
12 who had authority to speak in behalf of Japan?

13 A On reading the last paragraph it is clear
14 that this speech was made on some occasion commemor-
15 ating the prolongation of the Anti-Comintern Pact.
16 But it is also equally clear that this speech was not
17 a diplomatic pronouncement but was a speech made on
18 a social occasion. There were several functions in
19 commemoration of the prolongation of this pact held
20 after this prolongation was decided on. There were
21 four or five I believe, but I do not recall ever
22 having made a speech on any one of those occasions.

23 Q Was this speech made by you on any occasion,
24 or was it made by someone else with your approval or
25 acquiescence on any occasion?

1 A No, I have no recollection of this speech
2 at all.

3 Q Do you have any recollection of it as an
4 article given to the press, or, in other words, do
5 you have any knowledge of this document whatever?

6 A No, none whatsoever.
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1 Q General OSHIMA, this morning you advised us
2 that you arrived in Berlin on 19 February 1941. Do
3 you recall whether there was a reception accorded you
4 at the train upon your arrival?

5 A No, there was no reception on the train.

6 Q Who met you at the train?

7 A The State Secretary for Foreign Affairs.

8 Q Who was he?

9 A Weiszaecker.

10 Q Now, General OSHIMA, I am going to show you a
11 letter prepared by General Wiszaecker bearing date of
12 February 17, 1941, and I will ask you if that does not
13 refresh your recollection on the date as to the date of
14 your arrival.

15 A It does refresh my recollection.

16 Q Then, now will you tell the Tribunal the date
17 of your arrival?

18 A It was the 17th of February. I was mistaken.

19 Q And the telegram that you stated that had arrived
20 before your arrival actually arrived after your arrival,
21 didn't it?

22 A That I do not know because I wouldn't look at
23 a telegram immediately upon arriving in Berlin. In any
24 case when I told you it was the 19th of February that
25 was a mistake in my memory, on my part.

1 MR. TAVENNER: That concludes the cross-exam-
2 ination, if the Tribunal please.

3 ACTING PRESIDENT: I have one or two questions
4 on behalf of a Member of the Tribunal.

5 BY THE ACTING PRESIDENT:

6 Q Was the non-aggression pact which was concluded
7 between Germany and the U.S.S.R. aimed at Japan?

8 A No.

9 Q What Japanese interests were prejudiced by
10 that pact?

11 A No interests were prejudiced, none.

12 Q For what reasons were you dissatisfied with
13 that pact?

14 A The first point was that it was against the
15 Anti-Comintern Pact. The second point was that this
16 pact was concluded in the midst of negotiations for the
17 strengthening of the Anti-Comintern Pact and without
18 previous notice to Japan. Those were the two points
19 which were the reasons for my objections.

20 Q Did you not advocate a declaration of war
21 against the U.S.S.R. by Japan and Germany?

22 A Do you mean during the war, your Honor?

23 Q At any time.

24 A No.

25 ACTING PRESIDENT: That is all. Mr. Cunningham.

1 MR. CUNNINGHAM: If your Honor please, if there
2 are no other counsel who have any additional cross-
3 examination, I have a few questions or one question on
4 redirect. I should like to clarify a point which came
5 up during the cross-examination of this witness on
6 last Friday, November 28, transcript pages 34,130-131,
7 concerning the negotiations of 1938, 1939.

8 REDIRECT EXAMINATION

9 BY MR. CUNNINGHAM:

10 Q Mr. OSHIMA, on page 21 of your affidavit you
11 testified as to the instruction received by you at the
12 end of March 1939 that the Japanese government accented
13 in principle the duty of military assistance in case
14 Germany was attacked by countries other than Soviet
15 Russia. As suggested by Mr. Tavenner, in your interro-
16 gation, exhibit 497, transcript page 6,065, it appears
17 that you stated that according to the same instruction
18 the aid would be confined to military advice such as
19 trading of intelligence and so forth. Would you ex-
20 plain the discrepancy between the two statements?

21 A First of all I think there was a misinterpreta-
22 tion. The first mistake I believe was that "military
23 assistance" was translated "military advice."

24 The instructions I received from Japan were to
25 the effect that Japan would accept the duty of giving

1 military assistance. As I stated at the beginning of
2 my interrogation on this point, when I was receiving --
3 when I was being interrogated by the prosecution, the
4 contents of our talks, of my statements were abridged.
5 The instructions regarding the details of military
6 assistance or entering the war such as trading intel-
7 ligence reports or of giving bases, these instructions
8 came later. When I was speaking of these instructions
9 I abridged the contents of those instructions and,
10 therefore, a misunderstanding arose and the first and
11 second instructions were confused when they appeared
12 on the record. In this part of the interrogatories,
13 since the matters were very involved, there were other
14 points on which matters were confused, on which there
15 were mistakes. There were many involved matters, many
16 mistakes, but since it was a very complicated process
17 to try to correct these errors I decided to make a
18 general correction in my affidavit, of all these matters
19 in my affidavit.

20 ACTING PRESIDENT: We will adjourn to 1:30.

21 (Whereupon, at 1200, a recess was
22 taken.)
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AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess, at
4 1345.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

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8 H I R O S H I O S H I M A, an accused, resumed
9 the stand and testified through Japanese in-
10 terpreters as follows:

11 ACTING PRESIDENT: With the Tribunal's
12 permission the accused SHIMADA and HIRANUMA will be
13 absent from the courtroom the first period of the
14 afternoon session conferring with their counsel.

15 Mr. Cunningham.

16 MR. CUNNINGHAM: That concludes the re-
17 direct examination of this witness, and if there is
18 no objection to reading the following citations from
19 the record as corroboration of the evidence of this
20 witness, why I suggest that he can be excused on the
21 condition that we be permitted to recall him if and
22 when we decide whether or not to examine him further
23 on the documents which were introduced by the prose-
24 cution on cross-examination.
25

ACTING PRESIDENT: That is rather an unusual

request.

1 MR. CUNNINGHAM: Well, you see, your Honor,
2 our defense was based upon the case as the prosecution
3 made it out in their part of the case, and naturally
4 we haven't had an opportunity to peruse these docu-
5 ments and to explore the other documents which we
6 have, which will explain and defeat the purpose,
7 perhaps, of the documents of the prosecution which
8 were introduced in cross-examination. I merely want
9 it understood that the witness is not excused per-
10 manently but on that condition.

12 ACTING PRESIDENT: It is suggested to me
13 that if you pursue that course that you will have to
14 present your evidence by affidavit in advance, and the
15 Court can determine at that time whether or not it
16 will be allowed to be admitted.

17 MR. CUNNINGHAM: Well, it occurs to me that
18 we should be no more bound to serve the evidence by
19 affidavit than we would be to serve the questions
20 which we were going to ask on redirect examination
21 based upon the cross-examination, any more than the
22 prosecution should have been required to serve upon
23 us their cross-examination. I submit that under a
24 fair interpretation of the rule they should have been
25 required to do so, but we shouldn't be required to do

1 so either.

2 We are getting into a moot question again,
3 your Honor, because I am not sure I am going to ask
4 him back. I merely want to preserve my record.

5 THE PRESIDENT: Well, I am not going to
6 make a ruling on that without the vote of the
7 Tribunal. Personally, I do not agree with you. We
8 will deal with the matter when it arises.

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1 MR. CUNNINGHAM: I ask that the witness be
2 returned to his usual place.

3 ACTING PRESIDENT: I have just been handed a
4 few more questions by a Member of the Tribunal.

5 Did you conduct negotiations in Berlin with
6 the aim of obtaining a piece of land and a house for
7 the Japanese Embassy where you could carry out an in-
8 telligence and subversive activities against the
9 U.S.S.R.?

10 THE WITNESS: When I was military attache,
11 one of my subordinates did buy a house.

12 ACTING PRESIDENT: The next question: Did you
13 buy a piece of real estate in Falkensee, and in whose
14 name was it bought?

15 THE WITNESS: I think it was bought in the
16 name of an officer in the Ministry of National Defense.

17 ACTING PRESIDENT: Whose money paid for it?

18 THE WITNESS: The Japanese Army.

19 ACTING PRESIDENT: Do you confirm the fact
20 that the above-mentioned estate was then the headquarters
21 of Japanese White Russian spies where anti-Soviet
22 pamphlets were printed for conveying to the Soviet
23 Russia and where the different subversive measures have
24 been worked out against the U.S.S.R.?

25 MR. CUNNINGHAM: I should like to object to

1 that question for the reason that it is immaterial and
2 it is common knowledge that Soviet Russia has the same
3 activities going on in practically every country in
4 the world and we should not have to defend against
5 something like that.

6 ACTING PRESIDENT: The objection is overruled.

7 THE WITNESS: I did hear that a very small
8 number of people were carrying on printing work in that
9 house. But I do not know what the effects of their
10 work were, what they achieved. Furthermore, I do not
11 think that house was ever made the headquarters for
12 any subversive activities.

13 ACTING PRESIDENT: Are you aware of any facts
14 when in 1938 and 1939 the Japanese Embassy in Berlin
15 sent saboteurs and terrorists into the U.S.S.R. by way
16 of Turkey in order to kill Stalin?

17 MR. CUNNINGHAM: I should like to object to
18 that question for the reason that it anticipates a
19 political offense for which the accused is not on trial
20 here and is certainly immaterial in this proceeding.

21 ACTING PRESIDENT: That objection is overruled.

22 THE WITNESS: There are no such facts.

23 ACTING PRESIDENT: Did you have a talk with
24 Himmler on 31 January 1939 to the effect that, together
25 with German spies and with the assistance of White

1 Russians, you were undertaking a large-scale sabotage
2 and terroristic work and that you sent ten of your
3 agents with bombs across the Caucasus in order to
4 assassinate Stalin?

5 MR. CUNNINGHAM: That is objected to as repe-
6 tition.

7 ACTING PRESIDENT: Objection overruled.

8 THE WITNESS: I never had any such conversation
9 with Himmler.

10 ACTING PRESIDENT: That is all the questions
11 by the Tribunal.

12 Have you any further questions?

13 MR. CUNNINGHAM: No further questions at this
14 time, your Honor.

15 ACTING PRESIDENT: The witness will take his
16 place in the dock.

17 (Whereupon, the witness was excused.)
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1 MR. CUNNINGHAM: In order to corroborate the
2 statement of OSHIMA I should like to call the attention
3 of the Court to the following exhibits and witnesses.

4 MR. TAVENNER: If the Tribunal please.

5 ACTING PRESIDENT: Mr. Tavenner.

6 MR. TAVENNER: Counsel has stated that he
7 desires to call to the Tribunal's attention certain
8 references. Those references appear in the second
9 document or supplemental document entitled "Defense
10 document 2862."

11 I am mistaken. It states that it is to
12 appear after document 2862, but is not on the order
13 list.

14 Now, this three and a half page statement is
15 something far more than a statement of references to
16 exhibits. It is an argument prepared by counsel for
17 the purpose of discussing the weight of the witness'
18 affidavit and is the type of an argument which you
19 would expect to hear in the summation of the case, and
20 every bit of which you will hear in the summation of
21 the case. I think it would constitute a harmful
22 precedent to permit this type of argument to be made
23 during the course of the taking of evidence, and it
24 would be in opposition to all the rulings of the Tribunal
25 on this subject.

1 For these reasons, I offer objection to the
2 introduction or reading of this document in evidence.

3 MR. CUNNINGHAM: Your Honors, a word of
4 explanation may alleviate the situation here.

5 In the first place, we have listened to the
6 prosecution interrupt our defense case time and time
7 again by arguing their case by supporting the cross-
8 examination and the additional examination by references
9 to the exhibits and by references to the court page
10 records.

11 ACTING PRESIDENT: There is no objection to
12 your making references to pages of the transcript or
13 the exhibit. The argument that you have added to it
14 is what the prosecution objects to.

15 MR. CUNNINGHAM: That was my second point,
16 your Honor.

17 In the preparation of our defense case we had
18 affidavits and documents which were lengthy and which
19 would have established these facts which are established
20 by a mere sentence here and there and we devised this
21 as a time-saver to prevent putting in this additional
22 corroborating evidence.

23 Now I admit that this might be proper in
24 summation, but I submit that it will save the Tribunal
25 and us a great deal more time if, while the evidence

1 and the affidavit are fresh in the minds of the
2 Tribunal, we can by mere reference refresh your
3 recollection rather than in summation have to go
4 in broad detail to bring back to light the things
5 which were mentioned in the affidavit. I think it
6 is a time-saver in both respects.

7 And in conclusion I admit that there are a
8 couple of quotations from the record, but we listened
9 here to 97 pages in the KIDO affidavit as reference to
10 the record and refreshing recollection. I only have
11 three pages here which will serve that purpose.

12 ACTING PRESIDENT: It is not a question of
13 the number of pages. The question is what is in those
14 pages.

15 MR. CUNNINGHAM: Well, I suggest that I can
16 cut out the quotations as I go through and hammer it
17 down a couple of sentences.

18 ACTING PRESIDENT: By a majority the objection
19 is overruled to that part, except the mere citations
20 to the exhibits and the pages of the transcript.

21 I said that the objection was overruled. I
22 meant to say that the objection was sustained.

23 MR. CUNNINGHAM: With the exception?

24 ACTING PRESIDENT: With the exception.

25 MR. CUNNINGHAM: Well, that is the way I

1 understood you, and I was about to scratch out all
2 the material except the references.

3 As to paragraph 6, (5), b, concerning
4 OSHIMA's understanding of the purpose of the Anti-
5 Comintern pact:

6 1) Exhibit 484, transcript pages 22,480-22,482
7 and 22,483-22,488.

8 I will eliminate the next.

9 2) Exhibit 2762, transcript page 24,739.

10 3) Exhibit 486-A, transcript page 5,976.

11 Does that comply with your ruling?

12 ACTING PRESIDENT: Go ahead.

13 MR. CUNNINGHAM: (Continuing)

14 4) Exhibit 2487, transcript page 20,623, and
15 exhibit 2488, transcript pages 20,671-20,675.

16 5) Exhibit 2497, transcript pages 20,818-9.

17 As to paragraph 7 of the affidavit:

18 Exhibit 2762, transcript page 24,739.

19 3. As to paragraph 9, (8), concerning...

20 1) Exhibit 2619, transcript page 22,542.

21 Page 2, or page 5B here, but reading page 2:

22 2) Exhibit 2735-A, transcript page 24,290.

23 4. As to paragraph 10, (2):

24 Exhibit 506, transcript pages 6124-6:

25 5. As to paragraph 11, (2), transcript pages

24,554-24,555.

1 6. As to paragraph 12, (1), exhibit 2744,
2 transcript page 24,402.

3 7. As to paragraph 12, (2), exhibit 2744,
4 transcript page 24,404.

5 8. As to paragraph 14, (1):

6 1) Exhibit 2762, transcript pages
7 24,740-1.

8 2) Transcript pages 26,678-26,683.

9 3) Transcript pages 26,919-26,920, and
10 26,916.

11 9. As to paragraph 15, (3):

12 Exhibit 582, transcript pages 6543-4.

13 10. As to paragraph 16:

14 Exhibit 2762, transcript page 24,742.

15 11. As to paragraph 17, (1):

16 1) Testimony of witness YAMAMOTO,
17 transcript pages 26,119-26,121.

18 2) Exhibit 3000, transcript pages
19 26,570-1, affidavit of Admiral NOMURA.

20 12. As to paragraph 17, (5):

21 1) Exhibit 2762, transcript page 24,742.

22 2) Exhibit 2763, transcript page 24,749,
23 testimony of Schmidt in Nurnberg Trial.

24 13. As to paragraph 18 of the affidavit,
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1 testimony of Admiral NOMURA, transcript page 26,599-
2 26,600.

3 14. As to paragraph 19:

4 Affidavit of Admiral NOMURA, exhibit
5 3000, transcript page 26,569.

6 15. As to paragraph 20:

7 Testimony of Admiral NOMURA, transcript
8 pages 26,579-26,581.

9 I would like to suggest that items 30 and 31
10 on the order of proof have been eliminated.

11 Defense documents 2819, 2819-A, 2819-B and
12 2819-C are offered for the purpose of showing exchange
13 of views concerning the appointment of Ambassador OSHIMA
14 before his first tour of duty and the normal manner in
15 which his appointment took place.
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1 ACTING PRESIDENT: The documents will be
2 admitted.

3 CLERK OF THE COURT: Defense document 2819
4 will receive exhibit No. 3523, defense document
5 2819-A will receive exhibit No. 3523-A; defense
6 document 2819-B will receive exhibit No. 3523-B,
7 and defense document 2819-C will receive exhibit
8 No. 3523-C.

9 (Whereupon, the documents above
10 referred to were marked defense exhibit
11 Nos. 3523, 3523-A, 3523-B, and 3523-C,
12 respectively, and **received** in evidence.)

13 MR. CUNNINGHAM: I now offer to read in
14 evidence exhibit 3523:

15 "September 16, 1938

16 "From: Foreign Minister UGAKI

17 "To: Premier KONOYE

18 "Subject: Proceedings in regard to the
19 Emperor's appointment of Lieutenant General OSHIMA
20 as Japanese Ambassador to Germany.
21

22 "With reference to the matter of appoint-
23 ing Lieutenant General OSHIMA Hiroshi, now serving
24 as a military attache to the Japanese Embassy in
25 Germany, to the post of Japanese Ambassador to
Germany, as already arranged with Your Excellency

1 informally, I rely upon Your Excellency to obtain
2 the Emperor's approval at Your Excellency's earliest
3 convenience so that I would be able to proceed with
4 this matter. I am looking forward to Your Excellency's reply.

5 "(signed) Minister

6 " " Vice Minister

7 " " Chief of the Personnel Department

8 "(seal) Administrative Chief

9 - - -

10 "Certificate of Source and Authenticity

11 "I, HAYASHI Kaoru, who occupy the post of
12 Chief of the Archives Section of the Foreign Office,
13 hereby certify that the documents hereto attached,
14 written in Japanese, consisting of 6 pages and con-
15 taining the following letters, are exact and author-
16 ized copies of excerpts from official documents in
17 the custody of the Japanese Government (the Foreign
18 Office).

19 "1. Letter of informal request from Foreign
20 Minister UGAKI addressed to Premier KONOYE, dated
21 September 16, 1938

22 "2. Letter from Premier KONOYE to Foreign
23 Minister UGAKI, dated September 22, 1938

24 "3. Letter of inquiry, dated October 6,
25

1 1938, from Foreign Minister KONOYE to War Minister
2 ITAGAKI regarding the Emperor's appointment of
3 Lieutenant General OSHIMA as Ambassador

4 "4. JIN O No. 1774, dated October 7, 1938,
5 from War Minister ITAGAKI addressed to Foreign
6 Minister KONOYE in reply to the inquiry regarding
7 the Emperor's appointment of Lieutenant General
8 OSHIMA as Ambassador.

9 "Certified at Tokyo," and so forth.

10 I now offer to read into evidence exhibit
11 3523-A:

12 "From: Premier KONOYE

13 "To: Foreign Minister UGAKI

14 "Your request to take necessary steps in
15 regard to Lieutenant General OSHIMA Hiroshi is
16 hereby acknowledged. I beg to inform you that the
17 Imperial approval has been obtained informally on
18 this 22nd inst."

19 I now offer to read into evidence exhibit
20 3523-B:

21 "October 6, 1938

22 "From: Foreign Minister KONOYE

23 "To: War Minister ITAGAKI

24 "Subject: Inquiry about the Emperor's
25 appointment of Lieutenant General OSHIMA as

1 Japanese Ambassador to Germany

2 "As it is desired to recommend to the
3 Throne the name of Lieutenant General OSHIMA
4 Hiroshi, Junior Fourth Court Rank, 2nd Order of
5 Merit, as Envoy Extraordinary and Ambassador Pleni-
6 potentiary to Germany, I wish to ascertain whether
7 it is objectionable on the part of your Ministry.
8 If not, may I trouble you to send me a copy of his
9 curriculum vitae?

10 "(signed) Vice-Minister

11 "Chief of the Personnel Department

12 "(seal) Administrative Chief"

13 I now offer to read in evidence exhibit

14 3523-C:

15 "October 7, 1938

16 "From: War Minister ITAGAKI, Seishiro

17 "To: Foreign Minister Prince KONOYE Fumimaro

18 "Subject: Reply to inquiry regarding the
19 Emperor's appointment of Lieutenant General OSHIMA
20 as Ambassador
21

22 "With reference to the inquiry in your
23 letter of JIN KIMITSU GO GAI dated October 7th,
24 there is no objection on the part of War Ministry.

25 "Notice: His curriculum vitae is attached
hereto."

1 We offer in evidence the excerpt from the
2 interrogation of Yosuke MATSUOKA for the purpose of
3 showing the lack of participation of Ambassador
4 OSHIMA in the determination of the foreign policy
5 of Japan during the time MATSUOKA occupied the
6 post of Foreign Minister.

7 ACTING PRESIDENT: Mr. Tavenner.

8 MR. TAVENNER: If the Tribunal please, the
9 prosecution objects to the introduction of this
10 excerpt from the interrogation of MATSUOKA. A
11 similar excerpt from the interrogation of MATSUOKA
12 was offered on 17 June 1947 and rejected at record
13 24,570. The matter was fully heard by the Tribunal.
14 It was fully argued, and I assume it is not neces-
15 sary to reargue the same question.

16 ACTING PRESIDENT: Personally, I do not
17 remember the real ground for not admitting the
18 document.

19 MR. TAVENNER: The objection was based on
20 the ground that the interrogatories that had been
21 taken of the accused should not be admitted in
22 evidence except as to the accused themselves. That
23 was the ruling of the Tribunal at a very early stage
24 of the prosecution's case. The prosecution was not
25 entitled to do that under the ruling of the Tribunal,

1 and the position was taken, when the other excerpt
2 was produced, that it applied also to the defense.
3 The prosecution used no part of the interrogation
4 of this accused.

5 The President of the Tribunal, in announce-
6 ing the decision, stated as follows:

7 "We have fully considered that matter, and
8 by a majority we came to the conclusion that the
9 interrogation of any of the accused can be used for
10 or against himself only. That is what it amounts to.
11 Of course, where one of the other accused heard
12 what he said and admitted its truth, it could be
13 used against him, but we know of no such case yet.

14 "MR. COMYNS CARR: MATSUOKA no longer being
15 amongst the accused, I assume the ruling means that
16 his interrogation cannot be used by either side.

17 "THE PRESIDENT: That is the Court's
18 decision, and we will hear no discussion about it."
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ACTING PRESIDENT: Does the fact that

MATSUOKA is dead make any difference?

1 MR. TAVENNER: MATSUOKA was dead at the time
2 of this decision of the Tribunal.

3 MR. CUNNINGHAM: Well, if your Honor please,
4 if Mr. MATSUOKA were alive today I presume he could
5 answer questions that are contained in here, and
6 the mere fact that he has passed away should not
7 deprive us of the valuable use of his words.

8 The second point is that the evidence
9 previously was offered in the general phase of the
10 case and not in behalf of one of the defendants who
11 has benefitted by his statement.
12

13 The third suggestion is that if the evidence
14 would have been admissible against any of the other
15 accused, certainly it should be admissible in favor
16 of them, and the fact that the accused was not within
17 hearing distance to hear what MATSUOKA said should
18 not determine the probative value of the words of
19 MATSUOKA on that occasion.

20 It would require a mighty strict rule of
21 evidence to preclude evidence of this kind when it
22 is helpful to an accused who is on trial. I feel
23 quite sure that the President of the Tribunal in
24 announcing his decision in that former matter did
25 not contemplate a situation in which the evidence

1 could be of use to mitigate or to acquit one of the
2 accused. I argue that this evidence has high pro-
3 bative value. It is a statement made by the superior
4 officer of the accused on trial, and certainly has
5 more bearing than any evidence I could imagine to be in
6 favor of an accused. We have listened to the prosecu-
7 tion's evidence, statements by MATSUOKA which are
8 deemed by the prosecution to be harmful to these
9 accused. We ask that the Court entertain this docu-
10 ment, which is made by MATSUOKA and which is helpful
11 to the accused.
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1 MR. TAVENNER: If the Tribunal please, there
2 was a second ruling by the Tribunal on the same type
3 material, which occurred the day after the ruling that
4 I referred to a moment ago, and which I would like to
5 present to the Tribunal if I am permitted to do so.

6 ACTING PRESIDENT: We will be glad to have it.

7 MR. TAVENNER: On the following day Mr.
8 Cunningham presented a statement made by MATSUOKA in
9 January 1946 for admission in evidence, and in ruling
10 upon it the President of the Tribunal stated, in reject-
11 ing the document, "It is clearly covered by the Court's
12 well-considered decision given yesterday, the decision
13 given after hearing the parties fully."

14 MR. CUNNINGHAM: I suggest, your Honor, that
15 that ruling was made in the general phase of the case,
16 and I submit that it was effective in that argument on
17 that day, but in this instance the rule applied there
18 should not apply here. There we were only trying general
19 issues; here we are trying to determine the fate of one
20 of the accused, and I submit that this helps him, and I
21 suggest that it should be accepted for its high probative
22 value.
23

24 ACTING PRESIDENT: I have a request from one
25 of the Members of the Tribunal for a consideration of
this matter in chambers. Mr. Tavenner, would you give

1 the page numbers that you referred to, and also the
2 dates?

3 MR. TAVENNER: The first page number is
4 24,570 to 24,572, and the second reference that I made
5 was at page 24,576.

6 ACTING PRESIDENT: Have you anything to take
7 up in five minutes?

8 MR. CUNNINGHAM: I think the next document
9 will be objected to.

10 MR. TAVENNER: Yes, it will be.

11 MR. CUNNINGHAM: We will be in a long session
12 on that, too.

13 ACTING PRESIDENT: We will recess until three
14 o'clock.

15 (Whereupon, at 1440, a recess was
16 taken until 1515, after which the proceedings
17 were resumed as follows:)
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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

ACTING PRESIDENT: By a majority the Tribunal
adheres to its former decision and sustains the objec-
tion.

MR. CUNNINGHAM: I now offer in evidence
defense document 2854, an excerpt from the official
transcript of the trial at Nuernberg, which contains
a part of Ribbentrop's testimony in that Tribunal as
of March 30, 1946. The parent document is already
marked for identification as exhibit 2692. This
document is now offered with the part of defense
document 1449 which was tendered in the Tri-Partite Pact
phase and rejected, transcript pages 24,587-24,600,
after a very long argument. The reason why I offer
it again is that this document specifically refers
to OSHIMA and therefore I think it would be admissible
in the individual phase of the case.

ACTING PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, it
is true it was rejected before but at one stage of
the proceedings the prosecution failed to object to
four sentences of this document which were introduced
in evidence as exhibit 2692-A, record 23,557, and
having failed to object to that and the document

1 having been admitted in part, to that extent we
2 feel that we should not object to the admission of
3 this document now except to the extent of the four
4 sentences already read in evidence, merely for the
5 purpose of not having them read twice. I am making
6 this statement only for the purpose of demonstrating
7 that we are not retreating or in any way abandoning
8 the general objection to the use of this type of
9 testimony.

10 . ACTING PRESIDENT: Having been admitted in
11 evidence once, I see no reason why it should not be
12 again as to those four sentences. The document will
13 be admitted; objection overruled.

14 CLERK OF THE COURT: Defense document 2854
15 will receive exhibit No. 3524.

16 (Whereupon, the document above
17 referred to was marked defense exhibit
18 No. 3524 and received in evidence.)

19 MR. CUNNINGHAM (Reading): "Excerpt from
20 exhibit No. 2692, official transcript of the Inter-
21 national Military Tribunal at Nurnberg, Germany, on
22 30 March 1946, (Pages 6814-6816).

23 "Witness: Joachim von Ribbentrop.

24 "Direct Examination by Dr. Horn.

25 "Q Did Japan, before her attack on Pearl

1 Harbor, notify Germany of her intention?

2 "A No, that was not the case. At that
3 time I tried, as far as Japan was concerned, to move
4 her to attack Singapore. A peace with England did not
5 seem possible, and I did not know in a military way
6 which measure would be possible to reach this aim.

7 "The Fuehrer instructed me, at any rate, in
8 a diplomatic way to do everything to reach or bring
9 about a weakening of the position of England in order
10 that the peace might be brought about.

11 "We believed that this could be done best
12 through an attack by Japan on the strong position of
13 England in East Asia. Therefore, I tried to influence
14 Japan to attack Singapore.
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1 "After the outbreak of the German-Russian
2 War, I also tried to have Japan attack Russia, for in
3 such a way I saw a quick ending of the war. Japan,
4 however, did not do that. Rather I should say, she
5 did neither the one thing we wanted nor the other,
6 but she did a third thing. She attacked the United
7 States at Pearl Harbor. This attack was for us a
8 complete surprise. We had considered the possibility
9 that Japan might attack Singapore or perhaps Hong
10 Kong or attack England, but we never considered that
11 she should attack the United States or that was any-
12 thing that we wanted; that is, the possibility of an
13 attack in England, but if that would happen, the
14 United States would intervene. That was the question
15 which we considered often at length but we hoped that
16 this would not happen and that America would not
17 intervene. That attack on Pearl Harbor was told in
18 Berlin -- or rather, I received knowledge of it
19 through the press and then I received Reuter's message
20 from the Japanese Ambassador OSHIMA. All other re-
21 ports or proofs or anything else are completely untrue
22 and I would like to testify to that under my oath.
23 I would like to go further than that and concur and
24 assert that even this attack was a surprise to the
25 Japanese Ambassador -- as he told me, it was a com-

plete surprise to him also."

1 I would like to suggest, your Honor, that
2 there isn't, in my submission, sufficient difference
3 between the document just admitted and the document
4 rejected just prior to this.

5 I go into the supplementary order of proof.

6 In the following series of documents it is
7 suggested that International Law regulates the privi-
8 leges and immunities which follow the official acts of
9 an ambassador. It is contended that the ordinary
10 consequences do not follow his acts but attach only
11 to his office and to his government; that his
12 exemption from personal responsibility is permanent;
13 that his privilege of freedom from trial binds third
14 powers as well as the nation to which he is accredit-
15 ed; that the law is so well established that mere
16 reference here to the general rules is all that will
17 be made. A brief of the cases supporting the theory
18 will be filed with the argument on summation. The
19 following documents are presented only for the purpose
20 of emphasizing the present state of the law.

22 I want to make an additional statement.
23 Before I begin this section of the individual defense,
24 permit me to say that neither the accused nor the
25 Japanese defense counsel for him wish to have an

1 acquittal solely on the claim of ambassadorial im-
2 munity.

3 MR. TAVENNER: If it please the Tribunal,
4 I dislike to interrupt counsel, but this certainly
5 is argument which does not have a place in this
6 phase of the case; and, therefore, I object to it.

7 MR. CUNNINGHAM: I submit, your Honor,
8 that this is a matter of courtesy to the Japanese
9 counsel and to the accused himself, and it should
10 be permitted to go into the record.

11 ACTING PRESIDENT: The proper place for a
12 statement of that kind is in the summation. It can
13 go into the record at that time.

14 MR. CUNNINGHAM: Your Honor, I did want to
15 have understood, before I presented the evidence,
16 the condition on which it was presented, if I might.

17 ACTING PRESIDENT: You told us that.
18 Objection sustained.
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1 MR. CUNNINGHAM: To corroborate the evidence
2 of the accused OSHIMA in that it was his duty to carry
3 on his relations with the German Foreign Minister and
4 that his acts were recognized in international law as
5 acts of state and in no sense personal, we offer defense
6 document 2728-A, an excerpt from "International Law by
7 Fenwick," second edition. Fenwick is one of America's
8 outstanding scholars of international law and is now
9 legal adviser in our State Department. We offer to
10 read only parts of this excerpt.

11 ACTING PRESIDENT: Mr. Tavenner.

12 MR. TAVENNER: If the Tribunal please, the
13 prosecution objects to this document and to each of
14 the next fourteen documents on the present order of
15 proof on the grounds,

16 1. That it is not necessary to prove the
17 principles of international law before this Tribunal
18 as has been repeatedly determined by the Tribunal,
19 record 17,601 to 17,606 and 17,665 to 17,685, and also
20 at 17,688 to 17,689.

21 2. These documents present purely legal argu-
22 ments which are not proper at this stage of the proceed-
23 ings. These excerpts from and citations of authorities
24 if pertinent should be submitted in the final summation
25 as, of course, they will be.

1 It has been almost axiomatic from the very
2 beginning of this trial that legal principles should not
3 be made the subject of evidence but should be alluded
4 to and would be considered by the Tribunal in summation.

5 MR. CUNNINGHAM: Well, your Honor, I shall take
6 up the objections as they are suggested.

7 The first is that the present state of the law
8 is not evidence. It is my submission that the prosecu-
9 tion has made the election as to the manner in which the
10 law of this case shall be provable by offering first
11 the conventions upon which the prosecution rely as
12 part of the law. If it is not necessary in this case
13 to prove the law then all of these conventions and
14 agreements which the prosecution has tendered are super-
15 fluous.

16 The second proposition is that the prosecution
17 has submitted as part of the law of this case a charter,
18 written presumably by the prosecution, which they say
19 states the law of the case, and if the law of this case
20 is not provable as any other fact is provable then the
21 Charter, having been filed as exhibit 9 in this case,
22 is superfluous.

23 My third point is that there being no code of
24 international law in a court hearing a case of first
25 instance on a question of international law must find

1 the law before it can fit the facts to that law. In
2 order for the Court to properly determine what is the
3 law in this case it must analyze four things: first,
4 conventions; second, treaties and agreements; third,
5 the writings of experts and scholars which is part of
6 the evidence just presented here.

7 ACTING PRESIDENT: There is no question but
8 that you have a right to argue the law. The only
9 question is what is the proper time.

10 MR. CUNNINGHAM: That is my next point, your
11 Honor. The fourth thing which it is necessary for
12 the Court to determine before it can find the law is
13 the cases which have been decided already and that is
14 the thing which I propose to prove and to argue upon
15 summation, but it is the state of the law, the actual
16 existence of the law, which is a provable fact as any
17 other fact before an international tribunal, different
18 than an ordinary municipal or national court which has
19 its code and its statutes to guide it, something which
20 this Tribunal does not have and which no international
21 tribunal has had in the past.

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23 ACTING PRESIDENT: We trust the Tribunal will
24 have all that included in your final summation.

25 By a majority the Tribunal sustains the objec-
tion.

1 MR. CUNNINGHAM: Well, your Honor, I had
2 presumed that I would be permitted to give my final
3 and climactic point before I was cut off.

4 ACTING PRESIDENT: The Tribunal has felt for
5 some time that there has been too lengthy arguments on
6 questions of admission of evidence.

7 MR. CUNNINGHAM: Well, your Honor, I presume that
8 leaves me one of two courses to follow: one, to offer
9 my documents into evidence and have them marked for
10 identification in order that I can make my record of
11 offer of proof.

12 ACTING PRESIDENT: My recollection is that
13 the clerk has a rejected document file which carries
14 the same implications.

15 MR. CUNNINGHAM: Well, then, I presume your
16 ruling just applies to the first document, 2728-4.

17 ACTING PRESIDENT: It applies to all fourteen.
18 You can make your tender. The ruling applies to all
19 fourteen.

20 MR. CUNNINGHAM: Well, your Honor, I can't see
21 how you can reject a document before it is offered.

22 ACTING PRESIDENT: We will put it the other
23 way: The objection will be sustained when the other
24 documents are offered. I thought that you would make
25 your tender of all fourteen at once and let them go

on the rejected calendar or whatever they may call it.

1 MR. CUNNINGHAM: Well, I am anxious to save
2 time on the matter. If my offer of proof as written
3 in my supplementary running commentary and order of
4 proof can be transcribed into the record the same as if
5 I had read the matter, I have no complaint about that.
6 Otherwise I will offer the documents in the way in
7 which I have them arranged.
8

9 MR. TAVENNER: If it please the Tribunal,
10 such a procedure would be just an evasion of the
11 Tribunal's ruling. If a document is not admissible in
12 evidence the comments as to what the document contains
13 is not admissible as part of the transcript. It would
14 seem to me that such a procedure would only be a subter-
15 fuge to state in the record the contents of a document
16 which the Tribunal has ruled is not admissible.
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1 MR. CUNNINGHAM: well, that gets into one
2 of the fundamental questions, your Honor. If there
3 is a review of this trial, if there is a review of
4 this proceedings, the reviewing authority has a
5 right to know what evidence was rejected which was
6 offered in behalf of the accused, and they also have
7 a right to know for what purpose that evidence was
8 offered. And anyone who has practiced law knows that
9 proof and evidence is not to be submitted in summation.

10 ACTING PRESIDENT: If you will read the front
11 page, it is not numbered, of your supplementary or-
12 der of proof for 28 November, which describes the docu-
13 ments, and make a tender of those, that will be suf-
14 ficient.

15 MR. CUNNINGHAM: Well, your Honor, if you
16 were a reviewing authority and would be satisfied
17 with that sort of an offer of proof on the part of
18 a counsel who was presenting evidence in a case, and
19 would consider that the court had no right to know
20 any more than what that page says as to what the ac-
21 cused wanted to present as evidence, then I am per-
22 fectly willing that that shall be accepted. But
23 that certainly would not be the standard I would fol-
24 low.
25

ACTING PRESIDENT: It happens you are not a

1 Member of the Tribunal, and we do not care for any
2 more remarks of that nature.

3 MR. CUNNINGHAM: Well, your Honor, I am an
4 officer of this court, and I must do my duty as I
5 see it.

6 Now, that completes the presentation of the
7 documents and the evidence in the individual case
8 of Ambassador OSHIMA, with the exception of the right
9 to recall the witnesses and to introduce more docu-
10 ments at such time as we make application to the
11 Court in answer to the documents introduced by the
12 cross-examination in surprise.

13 ACTING PRESIDENT: With reference to the
14 reservation made in the last part of your statement,
15 we ruled on that this morning.

16 Do you not care to make a tender of these
17 documents here by document numbers for the record?

18 MR. CUNNINGHAM: Yes, thank you very much.
19 In the discussion I had overlooked the matter.

20 I offer in evidence defense document 2793,
21 the excerpt from the Digest of International Law by
22 Hackworth.

23 ACTING PRESIDENT: Same ruling.

24 MR. CUNNINGHAM: Excerpts from Experts on
25 International Law, 2827-A.

1 Excerpt from American Journal of International
2 Law, 2827-H.

3 Excerpt 2727-B, Feller & Hudson. I might
4 suggest that that is useless, there being no page
5 number or anything that it refers to. The running
6 commentary gives the page and the section and the
7 chapter and so on.

8 Defense document 322, Draft Convention of
9 1932.

10 Defense document 323, Havana Convention.

11 Excerpt 2728-B, excerpt from Feller & Hudson.

12 2713, excerpt from Shirer's Berlin Diary.

13 I might say that that is not an excerpt from an inter-
14 national law authority and should not come under the
15 objection made by Mr. Tavenner. But I am not going to
16 argue that separately.

17 Defense document 2729 concerning Treatment
18 of Diplomats after Last War by Garner.

19 Defense document 2836, Corbett - McLeod's
20 Case.

21 2797, Survival of Immunity by Biggs.

22 2826, Oppenheim - Diplomatic Privileges
23 Generally.

24 2843, Fenwick, excerpt.

25 2803, Department of State Bulletin - Experts

on Nurnberg.

1 ACTING PRESIDENT: All these documents are sub-
2 ject to the same ruling, and are rejected.

3 MR. CUNNINGHAM: I would like, if your Honor
4 please, to have tomorrow a reconsideration of the ruling
5 on that question because I do consider it one of the
6 most vital issues involved in this case, and it is
7 one that will have its repercussions, and I feel
8 most serious that the Court has not given this matter
9 serious enough consideration at this time.

10 ACTING PRESIDENT: Mr. Tavenner.

11 MR. TAVENNER: If the Tribunal please, there
12 is one matter that counsel apparently has overlooked,
13 it is the redirect interrogatory of Mr. Eugene Ott
14 which was to be processed and served. I understand
15 the clerk has the copies but they have not been dis-
16 tributed yet. That is the only matter that I know
17 of that has not been disposed of in connection with
18 this phase.

19 ACTING PRESIDENT: We can take that up the
20 first thing in the morning.

21 We will adjourn until 9:30 tomorrow morning.

22 (Whereupon, at 1600, an adjourn-
23 ment was taken until Wednesday, 3 December,
24 1947, at 0930.)
25